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2 THE HONORABLE MARSHA J. PECHMAN
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CLUB 21 LLC dba SUGARS
11 NIGHTCLUB, TALENTS WEST II LLC,
12 RYAN McLEOD, and CATRINA NYHUS,

13 Plaintiffs,

14 v.

15 CITY OF SHORELINE, TONY BURTT,
16 SHORELINE CHIEF OF POLICE, and
17 SCOTT PASSEY, SHORELINE CITY
18 CLERK,

19 Defendants.

Case No. C08-0078 MJP

ORDER DENYING DEFENDANTS
CITY OF SHORELINE AND SCOTT
PASSEY'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

20 This matter comes before the Court on Defendants' Motion for Partial Summary
21 Judgment. (Dkt. No. 24.) The Court has considered Defendants' motion, Plaintiffs'
22 opposition (Dkt. No. 29), Defendants' reply (Dkt. No. 33), and other pertinent documents in
23 the record. For the reasons stated below, the Court DENIES Defendants' motion for partial
24 summary judgment.

Background

Plaintiffs seek injunctive and declaratory relief claiming that Chapter 5.10 of
Shoreline's Municipal Code violates their First and Fourteenth Amendment rights. (Dkt.

1 No. 29 at 2.) Plaintiffs also pursue injunctive and declaratory relief in their challenge to
2 two police raids that took place at Sugars nightclub on December 28, 2007. (Id.)
3 Additionally, Plaintiffs argue they are owed damages consisting of lost profits caused by
4 those raids. (Id.) In the present motion, Defendants City of Shoreline and Scott Passey,
5 Shoreline’s City Clerk, move for summary judgment on the issue of lost profits. (See Dkt.
6 No. 24.)

7 Discussion

8 I. Summary Judgment Standard

9 Summary judgment is not warranted if a material issue of fact exists for trial.
10 Warren v. City of Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995), cert. denied, 516 U.S. 1171
11 (1996). The underlying facts are viewed in the light most favorable to the party opposing
12 the motion. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).
13 “Summary judgment will not lie if . . . the evidence is such that a reasonable jury could
14 return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
15 248 (1986). The party moving for summary judgment has the burden to show initially the
16 absence of a genuine issue concerning any material fact. Adickes v. S.H. Kress & Co., 398
17 U.S. 144, 159 (1970). However, once the moving party has met its initial burden, the
18 burden shifts to the nonmoving party to establish the existence of an issue of fact regarding
19 an element essential to that party’s case, and on which that party will bear the burden of
20 proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). To discharge this
21 burden, the nonmoving party cannot rely on its pleadings, but instead must have evidence
22 showing that there is a genuine issue for trial. Id. at 324.

23 II. Loss of Profits

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1 The parties agree that, pursuant to Erie Railroad Co. v. Tompkins, 304 U.S. 64
2 (1938), Washington's state rule of decision on lost profit damages applies to this action.
3 (See Dkt. No. 29 at 4; see also Dkt. No. 33 at 3.) Under Washington law, lost profits are
4 recoverable as damages insofar as they can be estimated with reasonable certainty.
5 Lundgren v. Whitney's Inc., 94 Wn.2d 91, 97 (1980). When a plaintiff produces the best
6 evidence available on the issue and when that evidence provides a reasonable basis for
7 measuring lost profits, a wrongdoer may not benefit from difficulties in determining the
8 precise dollar amount of loss. Id. at 98 (citations omitted).

9 Defendants' motion for summary judgment claims that the business recap
10 summaries provided by Plaintiffs do not provide a reasonable basis for determining lost
11 profits. (Dkt. No. 24 at 4.) In their reply, Defendants further argue that Plaintiffs have
12 failed to establish that the City of Shoreline is legally liable for King County's actions.
13 (Dkt. No. 33 at 3.) However, because the Defendants did not raise the issue of transferred
14 liability in its original motion, the Court will not rule upon it here.¹

15 Summary judgment is denied because of the procedural posture of this action. On
16 October 24, 2008, the Court granted Defendants' motion for a continuance of certain dates.
17 (Dkt. No. 43.) Pursuant to the updated scheduling order, discovery will not be completed
18 until January 12, 2009 and expert witness disclosures are not due until November 14, 2008.
19 (Dkt. No. 44.) This updated schedule, which Defendants City of Shoreline and Scott
20 Passey requested, allows Plaintiffs to provide additional evidence on the issue of lost
21 profits. As such, summary judgment on the issue would be premature at this juncture. The
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24 ¹ Further, Defendants' reply asks the Court to strike two declarations filed with Plaintiffs' response.
(Dkt. No. 33 at 1-2.) Because the Court reaches its decision without considering either of the
declarations, the motion to strike is moot.
ORDER 3

1 Court need not reach the issue of whether Plaintiffs' business recap data is sufficient to
2 carry their burden.

3 **Conclusion**

4 Because discovery has not yet been completed, it would be improper for the Court
5 to determine at this time that Plaintiff has failed to demonstrate lost profits with reasonable
6 certainty. Defendants' motion of partial summary judgment is therefore DENIED without
7 prejudice.

8 The clerk is directed to send a copy of this order to all counsel of record.

9 DATED this 3rd day of November, 2008.
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12 s/Marsha J. Pechman
13 MARSHA J. PECHMAN
United States District Judge
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